

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
SCRANTON

DEC 22 2010

PER *M. S.P.*
DEPUTY CLERK

ERNEST JACK HILL, III, :
Petitioner, :
NO. 3:10-CV-2449
V. :
(Judge Kosik)
RONNIE HOLT, et al., :
Respondents. :

ORDER

AND NOW, this 22nd day of December, 2010, IT APPEARING TO THE COURT THAT:

- (1) Petitioner, Ernest Jack Hill, III, a prisoner confined at the United States Penitentiary, Canaan, Pennsylvania, filed the instant Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on November 26, 2010;
- (2) In his Petition, Petitioner questions the ability of the staff to provide coverage for medical emergencies at the USP- Canaan between the hours of 10:30 P.M. and 6:00 A.M.;
- (3) The action was assigned to Magistrate Judge Martin C. Carlson;
- (4) On November 29, 2010, the Magistrate Judge issued a Report and Recommendation wherein he recommends that the Petition for Writ of Habeas Corpus be denied without prejudice to Petitioner to pursue a separate Civil Action (Doc. 9);
- (5) Specifically, the Magistrate Judge found that the medical issues raised by Petitioner should be brought in a Civil Rights Action, and not by way of Habeas Corpus;
- (6) On December 20, 2010, Petitioner filed objections to the Magistrate Judge's Report and Recommendation;

AND FURTHER APPEARING THAT:

(7) When objections are filed to a report and recommendation of a Magistrate Judge, we review de novo those portions of the report to which objections are made. 28 U.S.C. § 636(b)(1) (2000); see Sample v. Diecks, 885 F. 2d 1099, 1106 n.3 (3rd Cir. 1989). In doing so, we may accept, reject, or modify the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); M.D. Pa. Local R. 72.3. Although our review is de novo, we may rely upon the Magistrate Judge's proposed recommendations to the extent that we, in the exercise of sound discretion, deem proper. See United States v. Raddatz, 447 U.S. 667, 676 (1980); see also Goney v. Clark, 749 F. 2d 5, 7 (3d Cir. 1984);

(8) We have considered the Magistrate Judge's Report, and we agree with his recommendation that the Petition for Writ of Habeas Corpus should be denied. Although Petitioner argues that Habeas Corpus is a proper avenue for raising his medical coverage issues, we disagree. We note that the five (5) cases cited by Petitioner in his Objections involve Bivens or 42 U.S.C. § 1983 civil rights actions. We agree with the Magistrate Judge's finding that Petitioner should have brought the instant action as a civil rights action and that habeas corpus is improper;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- (1) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated November 29, 2010 (Doc. 9) is **ADOPTED**;
- (2) Petitioner's objections to the Report and Recommendation are **OVERRULED**;
- (3) Petitioner's Petition for Writ of Habeas Corpus is **DENIED WITHOUT PREJUDICE**; and
- (4) The Clerk of Court is directed to **CLOSE** this case and to **FORWARD** a copy of this Order to the Magistrate Judge.



Edwin M. Kosik
United States District Judge